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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of Section 309(j) )  
of the Communications Act - )  
Competitive Bidding )

PP Docket No. 93-293

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TO: The Commission

REPLY COMMENTS OF AMERICAN PERSONAL COMMUNICATIONS

American Personal Communications ("APC")<sup>1/</sup> agrees with Telocator and the majority of commenters that oppose restrictions on the transfer of licenses for personal communications services ("PCS").<sup>2/</sup> Restrictions on transfer traditionally have been adopted to deter speculation. Auction procedures and the large up-front payments proposed by the Commission will accomplish that goal effectively.<sup>3/</sup>

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<sup>1/</sup> American PCS, L.P., d/b/a American Personal - Communications, a partnership in which APC, Inc. is the general managing partner and The Washington Post Company is an investor/limited partner.

<sup>2/</sup> Commenters opposing across-the-board anti-trafficking restrictions include Telocator, the Personal Communications Industry Association; Arch Communications Group, Inc.; Bell Atlantic Personal Communications, Inc.; BellSouth Corporation; GTE; McCaw Cellular Communications, Inc.; MCI Telecommunications Corporation; Nextel Communications, Inc.; NYNEX Corporation; Paging Network, Inc.; and Time Warner Telecommunications.

<sup>3/</sup> Under the Commission's proposed "two cents per megahertz per pop" method, the up-front deposit required of all bidders for the Washington/Baltimore major trading area would be \$4,666,725. This deposit would not be refundable if the successful bidder cannot make the payments terms specified for its bid.

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Accordingly, the Commission need not adopt new "anti-trafficking" restrictions for PCS. For the same reason, the Commission should abandon its proposal to apply Section 22.40(a) of its cellular rules to PCS. Under this rule, the Commission "will review a proposed transaction to determine if the circumstances indicate 'trafficking' in licenses" if the subject transfer or assignment application applies to "facilities that have not been constructed." Id. If the Commission does not subject the transfer of PCS licenses to across-the-board restrictions, this rule would have no place in the Commission's scheme for PCS.

We also agree with Telocator and others that the Commission's proposal to apply long-form cellular processing rules to PCS should not be adopted. The Commission's proposal to apply Sections 22.923 and 22.15 of its cellular rules, which concern the content and form of cellular rural service area ("RSA") applications, is particularly inappropriate. PCS applicants should not be required by Section 22.923 to submit "cellular geographic service area" maps and site-specific engineering data, prove compliance with cellular design concepts, detail the service proposed, provide costs of construction, and respond to other questions that pertain to RSA cellular applications but are irrelevant to PCS. Nor should PCS applicants be required by Section 22.15 to submit vertical sketches of each PCS antenna site and to obtain "reasonable assurance" of site availability, a staggering

burden for multiple applicants that may propose hundreds (or even thousands) of sites.<sup>4/</sup>

These burdens are both unnecessary and at odds with the substantive rules the Commission now has adopted for PCS. In particular, these cellular rules conflict with the blanket licensing provision contained in Section 90.11(b) of the Commission's new PCS rules and are rendered unnecessary by the build-out requirements contained in Section 99.206 of the PCS rules.<sup>5/</sup> A more rational and consistent approach would be to require PCS licensees to file an initial description of its system configuration when it begins commercial operation and then file periodic updates of its PCS transmitters, annually or perhaps quarterly.<sup>6/</sup> This approach would minimize

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<sup>4/</sup> It makes no sense from a regulatory or economic perspective to require each PCS bidder for the same market to descend upon that market and each locate and obtain "reasonable assurances" of site availability. In fact, requiring all bidders to negotiate for all sites before the auction could lead some parties to "lock up" prime sites that could later be assigned to the successful bidder (or its competitors) in a private auction.

<sup>5/</sup> APC was the first party to propose blanket licensing for PCS base stations. See APC, Petition for Rule Making (May 3, 1991). This approach, in conjunction with the field strength limits of Section 99.232 and the interference protection requirements of Section 99.233, provides PCS licenses with the flexibility to design their systems in a cost-effective manner while protecting incumbent microwave licensees from interference.

<sup>6/</sup> APC would support electronic filing of system updates, a process that would speed public access to information, reduce the cost of obtaining this information, and minimize the Commission's record-retention burdens. We understand that Telocator's Technical and Engineering Committee is addressing the configuration of such a system.

administrative burdens on PCS applicants and the Commission, while fully protecting microwave incumbents.

Many of the other 48 cellular rules the Commission proposes to apply to PCS are just as inappropriate. Part 22 rules concerning random selection, comparative evaluation of mutually exclusive applications, period of construction, and license period all conflict with Part 99 and should not be applied to PCS. There also is no need to submit the type of detailed and specific showing of an applicant's "financial qualifications" that has been required for RSA lottery applications in light of the significant up-front deposits that the Commission has proposed to apply. The cost and delay of obtaining those assurances would be a drain on resources that applicants should apply to their bids rather than to obtaining bank letters.

Although APC agrees that the Commission should avoid "needless duplication" of processing rules (p. 43), simply applying cellular rules now and correcting misfits later ultimately would expend more of the Commission's time and resources than adopting proper and specific PCS processing rules that are consistent with the Commission's substantive rules for PCS in the first instance. The Commission should adopt Part 99 processing rules for PCS that do not restrict license transfer; that do not require the submission of unnecessary technical and financial information; and that

reflect the Commission's blanket licensing concept for PCS base stations.

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APC also believes that the use of an electronic bidding system, suggested by several commenters, is an interesting idea that should be explored. We would hope and expect, however, that the Commission would use only tried-and-true computerized systems that have been tested and utilized elsewhere in the federal government to conduct what could be the largest auction in history.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

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